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No.

Office - Supreme Court, U.S.
FILED
MAY 31 1983
ALEXANDER L. STEVAS,
CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOSEPH LEE TOWNER AND
ROGERS LOUIS HICKS,

Petitioners,

vs.

VANDERBILT UNIVERSITY, et al,

Respondents.

APPENDIX

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOSEPH LEE TOWNER, SR., PRO SE
2860 Lera Jones Drive
Antioch, Tennessee 37013
(615) 361-1889

ROGERS LOUIS HICKS, PRO SE
1291 Fontain Avenue, S.W.
Atlanta, Georgia 30311

SUPREME COURT OF THE UNITED STATES

No. A-890

JOSEPH LEE TOWNER, ET AL.,

Petitioners,

v.

VANDERBILT UNIVERSITY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner(s), IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 31, 1983.

/s/ Sandra D. O-Connor
Associate Justice of
the Supreme Court of
the United States

Dated this 3rd
day of May, 1983

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C. 20543

May 4, 1983

Mr. Joseph L. Towner
9145 Lera Jones
Antioch, Tennessee

Mr. Roger Hicks
1291 Fontaine Avenue, S.W.
Atlanta, Georgia 30311

RE: Joseph Lee Towner, et al. v. Vanderbilt University, et al.
A-890

Dear Gentlemen:

Your application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice O'Connor, who on May 3, 1983, signed an order extending your time to and including May 31, 1983.

A copy of the Justice's order is enclosed.

Very truly yours,

ALEXANDER L. STEVAS,
Clerk

By

Katherine Downs
Assistant Clerk

Mr. Joseph L. Towner
Mr. Roger Hicks

gtb
Encl.
cc(letter only): William N. Ozier, Esq.
Wilson Sims, Esq.
J.O. Bass, Esq.

John P. Hehman, Esq.,
Clerk, U. S. Court of
Appeals for the Sixth
Circuit (your No. 79-1015)

No. 79-1015

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOSEPH LEE TOWNER, et al. Plaintiffs-Appellants	)	
vs.	)	O R D E R
VANDERBILT UNIVERSITY, et al. Defendants-Appellees	)	

Before: KEITH and CONTIE, Circuit Judges; and VANPELT, Senior District Judge.*

A majority of the court having not voted in favor of an en banc rehearing, the petition for rehearing has been referred to the hearing panel for disposition.

Upon consideration, it is ORDERED that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Clerk

* The Honorable Robert VanPelt, Senior District Judge for the District of Nebraska, sitting by designation.

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOSEPH LEE TOWNER and ROGERS LOUIS HICKS, Plaintiffs-Appellants,	)
VS.	)NO. 79-1015
VANDERBILT UNIVERSITY, et al, Defendants-Appellees	)

BRIEF IN SUPPORT OF MOTION TO RECONSIDER, ETC.

A. Did the Plaintiffs Really "Cheat"?

The foregoing question goes to the heart of the matter, one would assume. And yet, ironically enough, resolution of this important question, while giving a spiritual impetus for deciding in favor of or against the plaintiff, does not pose the precise threshold legal question necessary to correctly dispose of this lawsuit. It is very respectfully submitted that this case, like all other contract cases, must be approached with the idea that contract law must play some part in its resolution, particularly when the plaintiffs' claimed discriminatory

"enforcement" of the contract they entered into with the defendant Vanderbilt. Implicit in the Court's Appellate Decision, as well as in the Court's line of questions to counsel during oral argument, was the assumption that this case was a case resolvable in the main, by the facts. Hence, the Court assumed that this case was substantially controlled by the "Clearly Erroneous" Rule of Appellate Review. It is respectfully urged, however, that if the Court fails to attach importance to contract law, in a contract case, then the judicial process is not well served. It is respectfully submitted that the important legal step that the trial Court failed to take in approaching this lawsuit, was also not taken by this distinguished panel of the Sixth Circuit Court of Appeals. That step, simply stated, is to first construe the contract before embarking upon a review of the facts. Construction of the contract - which is a judicial func-

tion - would provide necessary insights into the meaning of the facts. See Union Planters Corporation, et al vs. Joseph P. Harwell, 578 S. W. 2d 87 (Tenn. Ct. of Appeals, 1978); Tennessee Enamel Mfg., Co. vs. Stoves, Inc., 192 F. 2d 863 (6th Cir. 1952)

At oral argument, plaintiffs' pointed out to this distinguished panel that resolution of the case must begin, as a matter of law, by looking at the nature of the contract. Assessment of the nature of the contract will then lead the court into the second important legal inquiry, to wit: whether there was "different" (as oppose to racially discriminatory) enforcement of the contract as to the plaintiffs in comparison to white students. This latter inquiry brings the Court within the broad parameters of 42 U.S.C. 1981, et seq., which proscribes discriminatory enforcement of contracts on the basis of race. Parenthetically, it can not

be overlooked that there is no dispute between the parties that plaintiffs contracts were enforced differently by the defendants from the manner of enforcement of white students' contracts. Defendants concede this proposition. The defendants simply adopt the legal position (as oppose to a factual position) that such different enforcement was justified under the circumstances, e.g., by bringing charges against the plaintiffs in the first place, and/or utilizing the schoolhouse procedures the school utilized in its trial process, and/or convicting the plaintiffs of alleged misconduct, and/or denying the plaintiffs the opportunity to seek the First American loan. Hence, it is self-evident that "different enforcement" of the contract was employed. Legal justification, therefore, becomes the real issue. Accordingly, it is crucial to first construe the nature of the contract in order to (1) properly assess the facts and their meaning,

and (2) legally assess the legal justification of the defendants' action. If the defendants' legal justification can not be legally sustained, pursuant to the nature of the contract, then the question of race arises, under the teachings of McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S. Ct. 1917, 36 L. Ed 2d 668 (1973).

It must have been obvious to this Distinguished Panel, in its review of the case, as it was admitted by the defendants repeatedly, and acknowledged by the Trial Court in its Memorandum, that this particular educational contract was a highly unusual educational contract. Precisely how unusual was the contract and the nature of its unusualness is a function of proper judicial "contract construction" and not a matter of resolving factual disputes. Again, one is irresistibly drawn back into a careful examination of the nature of the contract. When

the Dean of the defendant school called the school "a school of ambiguity" and described the school as an "experimental school", beset by many ambiguities, ones natural curiosity cries out: What was the nature of this admittedly, very unusual contract and what is a "school of ambiguity"? When the defendants admit that their contract was unlike any other contract in the country, the legal instinct demands that one construe the contract - which is a legal job and not a matter of evaluating the "weight of the disputed facts".

When one embarks upon the examination of the nature of this contract before the Court, one discovers some very startling and very revealing insights. Those insights lead one unerringly to racial discrimination. The first thing one discovers is that an "experimental school" is a very special brand of educational beliefs and philosophy developed

over the years in the "laboratories" of foreign educational institutions - notably Europe. Hence, an experimental school is not simply a school that experiments, but an institution that adheres to certain precise principles and values, which are alien and in contradiction to beliefs and values to which the lay public, including members of the legal profession - both lawyers and judges - are normally accustomed. Hence, one must be careful in using the word "cheating", for example, before one at least examines whether the term "cheating" has a convoluted meaning under the values of an "experimental" education - such is in fact the case. (See Appellants' Reply Brief, footnote 2)

Because this experimental school philosophy is so alient to the lay public's normal expectation and understanding of education, plaintiffs have encountered, somewhat understandably, significant resistence in getting

the Court to simply review - not accept, but just review - the substance of this philosophy. The Trial recordis over-flowing with unrebutted and unchallenged proof in respect to this philosophy as practiced by defendant Vanderbilt.

However, the Trial Court, and presumably this Court, went straight to the actions of the plaintiffs, and hence to the "factual" questions of "cheating", without first examining the laboratory test tube which contained and controlled those actions. The crucible within which these actions took place is the "nature of the contract". As a matter of fundamental obligation, the Court is obliged to look first to the nature of the contract, then construe it, before graffling with the facts. See O'Connor vs West Sacramento, 207 P. 527, 1989 Cal 7.

Because of the foregoing mentioned resistance, plaintiffs-appellants respectfully

asked this Distinguished Panel in footnote 2 contained in Appellants' Reply Brief, to examine for itself, merely as a point of reference, the mere fact that there does exist an alien form of educational philosophy known as "the experimental school", which was adopted from European educational experiences. To examine for itself, again, as a point of reference, for purposes of perceiving the differences and the nature of standard educational contracts (of which the Court is familiar) and alien "experimental contract" (of which the Court would not necessarily be familiar), in order to decipher the contrasting and contradicting philosophical perspectives of both. Once the Court becomes educated to the very existence of this alien strain of contract, all of the pieces of this case will fall into place. The case will fall into place simply by looking at the record, and only the record, with new understanding.

Hence, the question "did the plaintiffs really cheat?" will not be as traumatizing to the Court's sense of justice. (It is understandable to the plaintiffs that if the court believes that plaintiffs really "cheated," the court will have little sympathy for the plaintiffs claim in respect to "trial due process.") The plaintiffs, nor their counsel, wish for the Court to condone "cheating." The plaintiffs, nor their Counsel, wish to "hide behind" civil rights law to justify "cheating." The plaintiffs, nor their counsel, do not assert, nor do they wish for the Court to adopt a proposition that when a school fails to "catch" white students "cheating", but "catches" black students "cheating", this is an actual "civil rights" violation. Such a proposition would be a disservice to the entire civil rights movement and its great legacy. (Judge Conti in his question to plaintiffs' counsel during oral argument implicity

assumed that plaintiffs' counsel was making such a contention.)

Plaintiffs respectfully submit that once the Court examines the nature of the contract before the Court, properly construe it with new understanding, the Court will agree with the plaintiffs-appellants that, as a matter of law, there was no reasonable justification to convict them of "cheating." The Court will review with new understanding why witness Lowenthal, a white student, at page ___ of the Joint Appendix admitted that he helped a student-teacher named Berger pass the computer final and considered this action consistent with the "honor code." The Court will agree with witness Dan Lane that when he allowed a student to copy from his computer final, such actions were consistent with the philosophy of the school. (See J.A.) The Court will appreciate witness Professor Lou Millers' testimony that he repeatedly saw students aiding one

another on the computer final during the entire time that Hicks and Towner were students, without a word ever being spoken by anyone that such aid was in violation of any rules of the school. The Court will understand why plaintiff Hicks admitted that Towner gave him substantial help on the computer final and why this was acceptable conduct under the philosophy of the school. (J.A.) The reason why the Court will find all of the foregoing completely understandable will be due to the Court's re-examination of the nature of the contract, as that contract was designed by the defendants pursuant to the "experimental" philosophy of education. In a word, that alien philosophy adopts the position that students helping students, even to the point of copying, is educationally enriching to the student. (See Witness Dan Lane's testimony; see Appellants' Reply Brief, footnote 2).

Once the Court rids itself of the stigma-

tizing notion of "cheating", it is respectfully submitted that the Court will not adopt the very dangerous position that a private school can utilize any "schoolhouse" trial procedure that it wishes, no matter how contractually unconscionable those procedures may be, with impunity and without the intervention of a Court of equity. Such a dangerous position, leaves a gapping window for undisturbed racial discrimination and an unblocked conduit for racial mistreatment in private schools.

Legal resolution of the case reveals, after re-examining the nature of the contract existing at Vanderbilt, that the legal term "cheating" was, at best, vague and ambiguous, and at worst, totally inappropriate in the context of this school. This the defendants knew; and by their acknowledgement that the school was by nature ambiguous, they were charged with certain legal obligations - either explicit instructions or forebearance

in castigating students. The defendants honored them in respect to white students. Under the enforcement of their contract, plaintiffs were entitled to the same immunities as their white colleagues. The defendants singled out these two black students to castigate, with the foreknowledge that such actions were in violations of the very essence of the school's philosophy. It is respectfully submitted, that this is intentional racial discrimination.

For the foregoing reasons as well as reasons cited in plaintiffs original brief, the plaintiffs-appellants respectfully pray that the Court reconsider its decision of November 24, 1982 and/or refer the cause to the Court sitting en banc.

Respectfully submitted,

Russell B. Ennix
Attorney for Appellants
330 Charlotte Avenue

Suite 427
Nashville, Tennessee 37201
(615) 259-4330

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the foregoing Appellants' Brief In Support of Motion To Reconsider, Etc. were mailed to William N. Ozier, Esquire, J. O. Bass, Sr., Esquire, and Wilson Sims, Esquire, all of the law firm of Bass, Berry and Sims, First American Center, Nashville, Tennessee 37238, by dropping same in the U. S. Mail, postage prepaid, this 13th day of December, 1982.

_____

No. 79-1015

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOSEPH LEE TOWNER, et al.	)	
	)	
Plaintiffs-Appellants	)	
	)	
vs.	)	ORDER
	)	
VANDERBILT UNIVERSITY, et al.	)	
	)	
Defendants-Appellees	)	

Before: KEITH and CONTIE, Circuit Judges; and VAN PELT, District Judge.*

The plaintiffs Towner and Hicks, black students in the Graduate School of Management of Vanderbilt University in the early 1970's, brought this civil rights action against the University, University officials, and the First American National Bank of Nashville. Senior Circuit Judge Bailey Brown (then a chief district judge) conducted

* The Honorable Robert Van Pelt, Senior Judge of the District of Nebraska, sitting by designation.

a lengthy trial in October 1977 and April 1978 and found in favor of the defendants. The plaintiffs now appeal.

The plaintiffs' first claim is that they were denied due process in connection with proceedings initiated to determine if they had cheated on examinations and homework. The district court found that the due process claim was fatally deficient because the element of state action was not established. On appeal, the plaintiffs do not contest the district court's finding of no state action. Rather, they contend that due process principles should be extended to cover the actions of private parties in certain cases. We disagree. It is clear that due process does not protect against purely private actions. Newsom v. Vanderbilt University, 653 F. 2d 1100 (6th Cir. 1981).

The heart of the plaintiffs' case is that they were discriminated against because of

their race. 42 U.S.C. §1981 has been held to apply to actions of private schools. Runyon v. McCrary, 427 U. S. 160 (1976). To prevail, the plaintiffs first had to prove that they were treated differently than similarly situated white students.

With regard to each claim, the district court found by a preponderance of the evidence that the plaintiffs had not been treated differently than similarly situated white students. The only issue before the court as to the discrimination claims is whether the district court's finding of no disparate treatment was clearly erroneous.

Findings of fact are only clearly erroneous if the court is left with the definite and firm conviction that a mistake has been made. United States v. Jabara, 644 F.2d 574 (6th Cir. 1981). The "clearly erroneous" rule "recognizes and rests upon the unique opportunity afforded the trial

court judge to evaluate the credibility of witnesses and to weigh the evidence." Inwood Laboratories, Inc., v. Ives Laboratories, Inc., _____ U. S. _____, 102 S. Ct. 2182 (1982). We find that the district court's findings were not clearly erroneous.

We find no merit in the plaintiffs' claim that the district court erred in dismissing certain defendants prior to trial. We also find that the district court did not abuse its discretion in denying plaintiffs' motion to amend their complaint inasmuch as the motion to amend was filed over three years after this litigation was commenced.

For the reasons stated above and those set forth in Senior Circuit Judge Bailey Brown's thorough and well-reasoned opinion, the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

s/ John P. Hehman
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JOSEPH LEE TOWNER and ROGERS LOUIS HICKS, Plaintiffs,	)	
-vs-	)	CIVIL ACTION NO. 7242
VANDERBILT UNIVERSITY, ET AL., Defendants.	)	

MEMORANDUM DECISION

This action was brought by Joseph Lee Towner and Rogers Louis Hicks against numerous defendants, to redress alleged racial discrimination encountered during their attendance at the Graduate School of Management (GSM or School) operated by defendant Vanderbilt Univerrsity. In our order of May 25, 1977, we granted summary judgment in favor of all defendants except Vanderbilt University, James Davis, Robert Ullrich, and Robert Hayes. At the same time we held that, although Vanderbilt is a private institution, plaintiffs had stated a claim against it and the three named individuals under 42

U.S.C. §1981 as interpreted by the Supreme Court in Runyon v. McCrary, 427 U.S. 160 (1976). At the request of Plaintiffs' counsel, we also dismissed the class action claims asserted in the complaint.

We have now held a lengthy trial on the remaining merits. This opinion constitutes the court's findings of fact and conclusions of law.

At the outset, we should take note of the various theories advanced by counsel for the plaintiffs in support of this action. It has been contended that Towner and Hicks, as black persons who had suffered economic disadvantage or other disadvantage prior to their dealings with Vanderbilt, were specially recruited by the School as part of an "affirmative action" program. Having been so selected, it is argued the School had an especially great duty to insure that these two students were successful in their

academic endeavors, and the School simply failed to meet this obligation.

On the other hand, it has been contended that Towner and Hicks were qualified, competent students, and that they were selected on the basis of their race for disparate treatment, including lower grades for equivalent work, the imposition of extra work, the denial of access to certain educational loan programs, and so forth.

As an alternative contention as to intentional racial discrimination, it has been contended that because of confusion and ambiguity in GSM's educational requirements and standards, there was no way to distinguish plaintiffs' performance from that of other students. Therefore, if plaintiffs were treated differently than other students, such differential treatment must have been racially motivated.

The court believes there is no merit in the contention that Hicks and Towner were

entitled to special treatment, or that the School somehow became an insuror of their educational success, simply because they were black or because they came from underprivileged backgrounds. We have accordingly addressed only the question whether plaintiffs suffered differential treatment on the basis of race.[1]

---

[1]Vague reference has also been made during the course of these proceedings to due process concepts. There is absolutely no showing that any of the acts complained of constitute state action, which would bring the due process guarantees of the fourteenth amendment into play. To the contrary, defendant Vanderbilt University is a private, non-profit institution, and the remaining defendants are private individuals who at all material times were employees of Vanderbilt. In any event, plaintiffs are not here seeking to have this court order additional hearings at Vanderbilt. They seek money damages and an order requiring the defendants to award them degrees.

GSM is a relatively recent addition to Vanderbilt University. It began operating in 1969 and the first full class of students entered in the fall of 1970. GSM did actively encourage the enrollment of students with diverse racial and ethnic backgrounds, and apparently gave special consideration to black applicants. All blacks who applied for admission to the School's masters program in 1969, 1970 and 1971 were admitted. Plaintiffs Towner and Hicks were the only black applicants for the class entering GSM in the fall of 1971 and they, of course, were admitted.

Both Hicks and Towner had obtained loans for the purpose of financing their undergraduate educations and were therefore in debt at the time they applied to GSM. They and their families were unable to pay tuition and living expenses incidental to their attendance at GSM.

Arrangements were therefore made, primarily through the defendant Davis, for financial assistance. For the 1971-72 school year, Hicks received a full tuition grant (worth $) and a $2500 loan from Vanderbilt's Baker loan program. The same year, Towner received a full tuition grant, and a $1500 Baker loan.

For the 1972-73 academic year, Hicks received a $2800 tuition grant, a $3800 Baker loan, and a $250 emergency loan. Towner received a $2800 tuition grant, a $2200 Baker loan, and a $250 emergency loan, as well as the offer of a part-time job as a dormitory supervisor.

For the two years combined, Hicks received a total of $11,850 in grants and loans, and Towner received a total of $9250 in grants and loans. These amounts exceed the amount of financial assistance offered to any other student in GSM's history.

Plaintiffs complain that Davis excluded them from consideration for loans available under a cooperative program set up by Vanderbilt and the First American National Bank. However, the proof shows that the Baker loans actually made to plaintiffs were on terms much more favorable to plaintiffs than The First American loans.[2] Additionally, Davis had to consider the fact that Towner and Hicks might not have been approved for loans by First American, since with their existing indebtedness from college loans they were not good credit risks. It is the opinion of the court that Davis simply offered both plaintiffs the

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[2]The First American loans carried a higher interest rate than the Baker loans; interest had to be paid on the First American loans while the student was in school, while the Baker loans were interest-free during the student's enrollment; and the First American loans had to be repaid more quickly following graduation than the Baker loans.

best financial packages available, without regard to any racial considerations.

Towner and Hicks also claim they were the object of discrimination in grading, assignment of work, and other academic matters. This situation is complicated by the fact that GSM, at the time of plaintiffs' attendance, was experimenting with an innovative approach to graduate education which was loosely structured and provided fewer concrete guidelines for student performance than traditional educational programs. However, the School did not operate, as Towner and Hicks assert, with a complete lack of academic standards.

Grading at GSM, at all material times, was on the following basis:

"Pass" or "Complete"	- Satisfactory completion of course work
"Incomplete"	- failure to complete course requirements
"Repeat"	- performance insufficient

During their initial year at GSM, Hicks and Towner obtained a grade of incomplete in an inordinate number of courses. Hicks finished the year with ten incompletes, more than any other student. Towner had eight incompletes; this gave him, along with two white students, the second highest number of incompletes.

The second year of study at GSM involved, inter alia, completion of an independent study program. Hicks and ten white students with a large number of incompletes were informed by the faculty at the end of the first year that they would not be eligible for independent study credit until they had reduced the number of incompletes to three. Hicks was advised that, because of his ten incompletes, he would not be readmitted to the School for the second year of studies.

Subsequently, after Hicks advised the

defendant, Ullrich of certain personal problems which allegedly were responsible for his poor performance in the first year, the faculty voted to readmit Hicks despite his record. This was done partially in response to statements made in behalf of Hicks by Ullrich at a faculty meeting.

The Court finds no credible evidence in support of the view that Hicks and Towner received the incompletes because they are black. Rather, they received these grades because they did not complete the work required for the various courses.

Neither Hicks nor Towner was able to begin work on an independent study program until late 1972 or early 1973, since they spent the fall completing various aspects of their first year work. When Towner did develop an independent study plan, he proposed a forty hour per week internship with an accounting firm, Ernst & Ernst. The defendant Davis was a member of Towner's

independent study committee, and vigorously opposed the approval of Towner's proposal. Towner's proposal was in fact, rejected by the committee.

However, it appears to the court that this rejection was based on the committee's belief that Towner could not benefit educationally from the Ernst & Ernst experience, and would not be a credit to the school. This belief was supported by Towner's failure to pass the basic GSM accounting course in three attempts, even though he had majored in accounting while in college. Additionally, the committee had doubts that Towner could keep up with his other academic pursuits along with a regular forty hour work week. The rejection of Towner's proposal to work with Ernst & Ernst cannot reasonably be viewed as grounded in racial considerations, especially in light of the fact that a black GSM student had previously been

permitted to work for Ernst & Ernst in fulfillment of the independent study requirement.

Towner and Hicks have alleged certain other instances in which they feel they were singled out for differential treatment because they were black. These include the questioning of Towner by Professor Tivis Nelson, in a class on "group behavior", as to the subjective experience of one who becomes the object of discrimination; and the resignation of Hicks from the admissions committee because of his poor academic performance and the time committments required of committee members. It is sufficient to note that the court finds by the preponderance of the evidence that these incidents were not racially motivated. To the contrary, the evidence supports the view that both Towner and Hicks received fair and considerate treatment at all times from the

faculty and administration.

Additionally, plaintiffs claim that they were subjected to repeated charges of honor code violations, all involving alleged cheating by one or both of them, with or without the complicity of other students. It is their contention that these charges were groundless, and that they were brought as part of a racially motivated campaign to harass plaintiffs and to force their resignation or removal from GSM.

In each case, Towner and Hicks were "tried" by a panel composed of students and faculty members. As noted before, it is the opinion of the Court that constitutional standards of "due process" are not applicable to the actions of defendants herein. Therefore, our inquiry has been limited to a determination whether Towner and Hicks were subjected to unusual or differential treatment because they were black.

Towner was initially charged with cheating in a Quantitative Methods III course, and was convicted by the honor panel. A white codefendant, John Gade, was acquitted of similar charges. The court finds that the initial decision to bring charges against Towner and Gade was based on a reasonable suspicion that cheating had occurred, and that Towner's conviction and Gade's acquittal resulted from a reasonable appraisal of the facts presented to the panel and not from racial bias. Subsequently, the honor panel reopened the case on its own motion, and Towner was acquitted.

Towner was subsequently charged with cheating in another course, Advanced Motivation Theory, based on the instructor's reasonable suspicion that the handwriting on papers submitted by Towner was not his own. He was convicted on this charge also. The conviction was reversed by an appellate

panel on procedural grounds, and eventually the charges were dropped because of the School's inability to reconstitute a trial panel within the time allotted under the honor constitution. It appears to the court that defendants not only did not discriminate against Towner in these proceedings, but went out of their way to insure that he was given the benefit of all procedural protections which would be afforded any other student.

During the same period of time, both Hicks and Towner were charged with honor violations in a Computers course. Hicks was charged with and convicted of cheating, and in a separate trial, Towner was convicted of assisting Hicks in his efforts to cheat. Towner was later charged with the separate offense of cheating on his own work in the course. This last charge was apparently not followed up, since the stu-

dents and faculty were on summer vacation and a trial panel could not be constituted. Again, the court finds that these charges were brought on the basis of a reasonable suspicion that cheating had occurred, and we find no evidence that either the charges or the convictions were racially motivated. The convictions of both Towner and Hicks were appealed, but the appellate panel apparently has stayed any action on the appeals at the request of their counsel.

It should be noted that at the conclusion of all these proceedings, which occurred in the spring of 1973, Towner and Hicks had not been expelled or suspended from GSM. In June, 1973, Hicks was advised of the following uncompleted work necessary to obtain his master's degree:

1) pass the computer examination;

2) submit an acceptable paper in Small Business Management;

3) correct and rewrite an acceptable research paper concerning a local black banking institution in a shopping center feasibility study which had previously been submitted; and

4) pass the elective courses in Law and the Poor and Investment Analysis.

At the same time, Towner was advised of the following work necessary to obtain his degree.

1) pass the Operations Management-Production course;

2) pass the Computers course;

3) pass a re-examination in Managerial Finance;

4) submit an acceptable paper in Advanced Motivation Theory; and

5) correct two previously submitted papers and submit an acceptable research paper.

Neither Towner nor Hicks has attempted to complete these degree requirements.

On the evidence presented, the court finds that plaintiffs were not subjected to ill-treatment at GSM on the basis of

race, and were not denied the opportunity to make or to enforce contracts on that basis. To the contrary, we believe that defendants made substantial efforts to give plaintiffs special assistance, financially and academically, because they are members of a racial minority group and because of their financially underprivileged backgrounds. In light of these efforts, it is highly unlikely that the defendants subsequently entered a conspiracy to discriminate against Towner and Hicks, which is essentially what the plaintiffs contend occurred.

For all the foregoing reasons, the remaining defendants herein, Vanderbilt, Hayes, Davis and Ullrich are entitled to judgment in the premises.

The Clerk is directed to enter such judgment, with costs to be taxed to the plaintiffs.

It is so ORDERED.

Enter this 9th day of August, 1978.

s/ Bailey Brown
CHIEF JUDGE BAILEY BROWN

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

JOSEPH LEE TOWNER and ROGERS LOUIS HICKS,	)	
Plaintiffs,	)	
V.	)	CIVIL ACTION NO. 7242
VANDERBILT UNIVERSITY, ET AL.,	)	
Defendants	)	

JUDGMENT

This action came on for trial on October 31, November 1, 2, 3, and 4, 1977, and April 10, 11, and 12, 1978, before the Court, the Honorable Bailey Brown, Chief Judge of the United States District Court for the Western District of Tennessee, presiding and sitting by designation, and a decision having been duly rendred by Judge Brown in a Memorandum Decision received for entry on August 10, 1978;

It is ORDERED and ADJUDGED that the

plaintiffs, Joseph Lee Towner and Rogers Louis Hicks, take nothing; that the action against the remaining defendants, Vanderbilt University, James Davis, Robert Ullrich, and Robert Hayes, be dismissed on the merits; and that the said defendant herein recover of the plaintiffs, Joseph Lee Towner and Rogers Louis Hicks, their costs of action.

Dated at Nashville, Tennessee, this 10th day of August, 1978.

s/ Frank E. Williams
FRANK E. WILLIAMS, CLERK
United States District
Court Middle District of
Tennessee

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE

CONSTITUTION OF THE UNITED STATES:

"Fifth Amendment

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

"Sixth Amendment

In all criminal prosections the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

"Fourteenth Amendment

All persons born or naturalized in

the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall an State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its juisdiction the equal protection of the laws."

STATUTORY PROVISIONS:

"42 U.S.C. 1981

§1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the securit of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties. taxes, licenses, and exactions of every kind, and to no other."

"42 U.S.C. 1982

§1981. Property rights of citizens

All citizens of the United States shall have the same right in every state and Territory, as is enjoyed by white citizens thereof to inherit, purchase,

lease, sell, hold, and convey real and personal property.

"42 U.S.C. 1985

§1985. Conspiracy to interfere with civil rights--Preventing officer from performing duties

(1)****

(2)****

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws;.....in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

"42 U.S.C. §2000d

§136 Generally

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."